

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Louis Tamale,

Plaintiff,

No. CIV S-02-1703 LKK PAN PS

vs.

State of California, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

July 25, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Defendants and plaintiff have filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported in part.

1 Good cause appearing, the court hereby orders that:

2 1. The findings and recommendations filed July 25, 2005, are adopted in part.

3 2. Defendants California Department of Corrections, Avenal State Prison , the

4 State of California/American Psychiatric Association, Solano State Prison, and Warden, Avenal

5 State Prison were never approved for service and have not been served. Claims against them are

6 dismissed. Fed. R. Civ. P. 4(m).

7 3. The November 24, 2004, motion to dismiss by defendants Lambert, Wilson,  
8 Mitchell, Depner, Summers, Tamayo, Alexander, Sisto, Fortin, Huskey, Douglas and Davis is  
9 denied and these defendants shall answer plaintiff's pleading within 20 days.

10 4. Arguments raised in defendants' August 10, 2005, objections concerning the  
11 statute of limitations, Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) and Edwards v. Balisok,  
12 520 U.S. 641, 644-48 (1997) must be raised in a motion which gives plaintiff the opportunity to  
13 oppose them.

14 DATED: August 31, 2005.

15 /s/Lawrence K. Karlton  
16 LAWRENCE K. KARLTON  
17 SENIOR JUDGE  
18 UNITED STATES DISTRICT COURT  
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